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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2007-1795

LINNEA CELESTE RAMOS
2347 Royal Ann Drive
Union City, CA 94587

OAH No. 2009040654

Applicant for Vocational Nurse License


Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on September 18, 2009.

IT IS SO ORDERED this 19th day of August, 2009.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LINNEA CELESTE RAMOS
Union City, California 94587

Respondent.

Case No. VN-2007-1795

OAH No. 2009040654

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 3, 2009.

Deputy Attorney General Carol S. Romeo represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Respondent Linnea Celeste Ramos appeared and represented herself.

The matter was submitted on June 3, 2009.

FACTUAL FINDINGS

1. Respondent Linnea Celeste Ramos signed an application for a vocational nurse license on November 26, 2007, and submitted the application to the Board of Vocational Nursing and Psychiatric Technicians (Board) on December 24, 2007. The Board denied the application. Teresa Bello-Jones, J.D., M.S.N., R.N., acting in her official capacity as Executive Officer of the Board, filed a statement of issues. The statement of issues alleges that respondent has suffered two criminal convictions relating to the use of alcohol and that she failed to disclose one of the convictions on her application. (The second conviction occurred after respondent submitted her application.) Respondent requested a hearing.

2. Question 7 on the "Record of Conviction" section of the application for licensure asks, "Have you ever been 'convicted' of any offense, including traffic violations? Remember you must include: Misdemeanors and Felonies. Regardless of length of time which has passed since the conviction [*sic*]." (Original emphasis.) Respondent answered "No." By signing her application, respondent certified under penalty of perjury that the

information she provided was true and correct. Respondent's answer was false in that she failed to disclose the conviction set forth in Finding 3, below.

3. On August 27, 1998, in Santa Clara County Municipal Court Case No. C9883437, respondent was convicted on her plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a vocational nurse. Imposition of sentence was suspended and respondent was placed on court probation for three years on the conditions (among others) that she perform 15 days of weekend work, pay fines and fees of approximately \$650, and complete a first offender alcohol program. Respondent satisfied all of the terms and conditions of her probation.

4. The facts and circumstances leading to this conviction are that, on March 22, 1998, respondent drove a vehicle while under the influence of alcohol. When she was pulled over, respondent refused to take a breathalyzer test. She was, in her own words, a "young smart mouth." Respondent was 23 years old at the time she committed this offense.

5. On June 30, 2008, in Alameda County Superior Court Case No. 229320, respondent was convicted on her plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a vocational nurse. Imposition of sentence was suspended and respondent was placed on probation for three years on the conditions (among others) that she perform two days of weekend work (with credit for one day), pay fines and fees in the approximate amount of \$1,700, and attend a nine-month drinking driver program. Respondent is making monthly payments toward her fines and fees and she is current in her payments. She completed the drinking driver program in April 2009. As part of that program, respondent was required to attend six substance abuse education classes, 20 group counseling sessions, 14 individual meetings with a counselor, and 20 Alcoholics Anonymous-type meetings. Respondent fulfilled all of those requirements.

6. The facts and circumstances leading to this conviction are that, on May 8, 2008, respondent drove a vehicle while under the influence of alcohol. She was pulled over after a police officer observed her traveling at about 95 miles per hour in a 45 miles per hour zone. Respondent's blood alcohol level was 0.17 percent. Respondent testified that, after a particularly bad day, she had gone out drinking with her sister and then returned to her sister's house. She felt that she was sober enough to drive when she left her sister's home.

7. Respondent is 34 years old. She is a single parent who is solely responsible for the support of her 10-year-old son.

8. Respondent graduated from the LVN program at Merritt College in December 2007. (From 2004 to 2006, she attended Laney College to satisfy the prerequisites for the LVN program.) In January 2008, respondent applied for admission to the LVN-RN "bridge" program at Chabot College; as its name implies, this one-year program is for LVN's who

also want to become registered nurses. If her LVN license is granted, respondent hopes to enroll in the bridge program in 2010.

9. Since January 2009, respondent has been employed by Creative Home Care, Inc., a company that provides in-home care to elderly clients. Respondent supervises 10 certified nursing assistants. If she is granted her vocational nurse license, respondent will promote to "medical nurse" and will have more patient interaction. In a letter dated June 2, 2009, Marlene Bremer, the president of Creative Home Care, writes that she has been "very impressed and pleased with [respondent's] nursing knowledge, bedside manner, professional attitude and appearance." Bremer goes on to write that respondent's coworkers were very pleased with her recent promotion to supervisor because they consider respondent to be "knowledgeable, fair and a true leader."

10. Amanpreet Kaur and Mandeep Dhatt met respondent in the LVN program and they are friends of respondent. In separate letters dated June 1, 2009, they praise respondent for her clinical skills and judgment, her compassion for patients, her work ethic, and her honesty. They believe she will be an excellent nurse.

11. With respect to her DUI's, respondent testified that she made "dumb mistakes" for which she has no excuses to offer. She understands that, by drinking alcohol and driving, she placed her own life and the lives of others at risk. Respondent is confident that she will not make the same mistake again. Having her vocational nurse license denied was a "big eye-opener" that has greatly affected her life. She has worked hard to become a good nurse – her teachers have told her that she will be a great nurse – and she is mad at herself for placing her career in jeopardy by making bad decisions. Respondent testified that she rarely drinks, and she does not drink as a way to manage stress. If she drinks alcohol in the future, she will not drive, but will call a friend or take a taxi. Respondent feels that her decision-making is better now that she realizes her career is on the line.

12. Respondent testified that, when she was convicted of DUI in 1998, her lawyer told her that the conviction was a serious matter and that it would stay on her record for seven years; during that time, the lawyer informed her, she would need to disclose the conviction on all of her job applications. For seven years, respondent stated, she disclosed the conviction on every job application but, when the seven years was up, she assumed that the conviction was off her record and that she no longer needed to report it.

13. Respondent testified in a manner that was consistent with sincerity.

LEGAL CONCLUSIONS

1. First cause for denial. Business and Professions Code¹ sections 480, subdivision (a)(1), and 2866 together provide that an application may be denied if the applicant has been convicted of a crime that is substantially related to qualifications,

¹ All statutory citations are to the Business and Professions Code.

functions or duties of a vocational nurse. Cause exists to deny respondent's application by reason of the conviction set forth in Finding 3.

2. Second cause for denial. Cause exists under sections 480, subdivision (a)(1), and 2866 to deny respondent's application by reason of the conviction set forth in Finding 5.

3. Third cause for denial. Sections 480, subdivision (a)(3), and 2866 together provide that an application may be denied if the applicant has committed any act that would constitute cause for discipline if committed by a licensed vocational nurse. A licensed vocational nurse may be disciplined for engaging in unprofessional conduct (§ 2878, subd. (a)), which is defined to include the use of alcohol in a manner or to an extent dangerous to herself or others (§ 2878.5, subd. (b)) and being convicted of a crime involving the consumption of alcohol (§ 2878.5, subd. (c)). Cause exists under these provisions to deny respondent's application by reason of the matters set forth in Findings 3 through 6.

4. Fourth cause for denial. Sections 480, subdivision (c), and 2866 together provide that an application may be denied if the applicant knowingly made a false statement of fact required to be revealed in her application. Cause exists to deny respondent's application by reason of the matters set forth in Finding 2 and 3.

5. Respondent has suffered two convictions, ten years apart, for driving under the influence of alcohol. Her last offense occurred just over a year ago and involved conduct that posed a serious risk to the general public. Respondent will remain on probation for that offense until 2011. It appears, however, that respondent's attitude toward drinking and driving has changed. She acknowledges the severity of her misconduct and offers no excuses for it. She has been fully cooperative with her probation program, including completion of the drinking driver course. She takes her offenses seriously and, partly because her career as an LVN is important to her, she is highly motivated to avoid similar misconduct in the future. Since obtaining her LVN certificate, respondent has proven herself to be a valued and responsible employee. Although it has been just a year since respondent's last conviction, meaningful rehabilitation has already begun.

Any failure to disclose a material fact on a license application is a matter of serious concern. Respondent exercised poor judgment when she disregarded the plain language on the application form, which directs the applicant to report all convictions regardless of when they occurred, and chose instead to rely on general advice she had received from her attorney years earlier. It appears, however, that respondent's failure to disclose her 1998 DUI conviction was not due to fundamental dishonesty.

In closing argument, both parties stated that they would not be averse to granting respondent a probationary license with conditions, including conditions that respondent abstain from the use of alcohol and that she participate in rehabilitation and monitoring as directed by the Board. Respondent's rehabilitation has progressed sufficiently so that it would not be contrary to the public interest to issue her a probationary license.

ORDER

The application of respondent Linnea Celeste Ramos for a vocational nurse license is denied; however, the denial is stayed and a probationary license shall be issued to respondent for three (3) years subject to the following conditions:

1. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

Respondent shall comply with the terms of her probation in Alameda County Superior Court Case No. 229320. Any violation of probation in that case shall be deemed a violation of these probation conditions.

2. **SUBMIT WRITTEN REPORTS.** Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied

for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S). Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE. Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall automatically be extended for the same time period she resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

5. MEETINGS WITH BOARD REPRESENTATIVE(S). Respondent shall appear in person at meetings as directed by the Board or its designated representatives.
6. NOTIFICATION TO EMPLOYER(S). When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of respondent's license. This notification to respondent's current health care employer shall occur no later than the effective date of the decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's statement of issues and decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

7. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.**

Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. **SUPERVISION REQUIREMENTS.** Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

9. **COMPLETION OF EDUCATIONAL COURSE(S).** Respondent, at her own expense, shall enroll in and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the

Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

10. **MAINTENANCE OF VALID LICENSE.** Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. **LICENSE SURRENDER.** During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

12. **REHABILITATION PROGRAM.** Within thirty (30) days of the effective date of the decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended

by the program and approved by the Board. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within thirty (30) days of completion.

Components of the treatment contract shall be relevant to the violation and to respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by respondent.

13. **CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS.** Within five (5) days of the effective date of the decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by respondent with each written report required by the Board. Respondent shall continue attendance in such a group for the duration of probation.
14. **ABSTAIN FROM CONTROLLED SUBSTANCES.** Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.
15. **ABSTAIN FROM USE OF ALCOHOL.** Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.
16. **SUBMIT BIOLOGICAL FLUID SAMPLES.** Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and respondent's current employer.
17. **COMPLIANCE WITH PROBATION PROGRAM.** Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of probation, respondent's license will be fully restored.

18. VIOLATION OF PROBATION. If respondent violates the conditions of her probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the denial of respondent's license application that was stayed. If during probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

DATED: June 26, 2009

A handwritten signature in black ink, appearing to read "David L. Benjamin", is written over a horizontal line.

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 WILBERT E. BENNETT

Supervising Deputy Attorney General

3 CAROL S. ROMEO, State Bar No. 124910

Deputy Attorney General

4 1515 Clay Street, 20th Floor

P.O. Box 70550

5 Oakland, CA 94612-0550

Telephone: (510) 622-2141

6 Facsimile: (510) 622-2270

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. VN-2007-1795

13 LINNEA CELESTE RAMOS

2347 Royal Ann Drive

14 Union City, California 94587

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
19 Statement of Issues solely in her official capacity as the Executive Officer of the Board of
20 Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

21 2. On or about December 24, 2007, the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs received an application for a
23 Vocational Nurse License from LINNEA CELESTE RAMOS (Respondent). On or about
24 November 26, 2007, LINNEA CELESTE RAMOS certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on December 16, 2008.

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1 such license."

2 8. Section 2878 of the Code states, in pertinent part:

3 "The Board may suspend or revoke a license issued under this chapter [the
4 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

5 "(a) Unprofessional conduct, . . .

6 ". . . .

7 9. Section 2878.5 of the Code states, in pertinent part:

8 "In addition to other acts constituting unprofessional conduct within the meaning
9 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
10 licensed under this chapter to do any of the following:

11 ". . .

12 "(b) Use any controlled substance as defined in Division 10 of the Health and
13 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of
14 Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner
15 dangerous or injurious to himself or herself, any other person, or the public, or to the extent that
16 such use impairs his or her ability to conduct with safety to the public the practice authorized by
17 his or her license.

18 "(c) Be convicted of a criminal offense involving possession of any narcotic or
19 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
20 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
21 conclusive evidence thereof."

22 10. Section 490 of the Code states:

23 "A board may suspend or revoke a license on the ground that the licensee has been
24 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
25 of the business or profession for which the license was issued. A conviction within the meaning
26 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
27 contendere. Any action which a board is permitted to take following the establishment of a
28 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2007-1795

LINNEA CELESTE RAMOS
2347 Royal Ann Drive
Union City, CA 94587

OAH No. 2009040654

Applicant for Vocational Nurse License

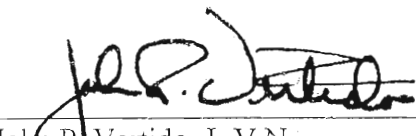
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on September 18, 2009.

IT IS SO ORDERED this 19th day of August, 2009.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LINNEA CELESTE RAMOS
Union City, California 94587

Respondent.

Case No. VN-2007-1795

OAH No. 2009040654

PROPOSED DECISION

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Deputy Attorney General Carol S. Romeo represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Respondent Linnea Celeste Ramos appeared and represented herself.

The matter was submitted on June 3, 2009.

FACTUAL FINDINGS

1. Respondent Linnea Celeste Ramos signed an application for a vocational nurse license on November 26, 2007, and submitted the application to the Board of Vocational Nursing and Psychiatric Technicians (Board) on December 24, 2007. The Board denied the application. Teresa Bello-Jones, J.D., M.S.N., R.N., acting in her official capacity as Executive Officer of the Board, filed a statement of issues. The statement of issues alleges that respondent has suffered two criminal convictions relating to the use of alcohol and that she failed to disclose one of the convictions on her application. (The second conviction occurred after respondent submitted her application.) Respondent requested a hearing.

2. Question 7 on the "Record of Conviction" section of the application for licensure asks, "Have you ever been 'convicted' of any offense, including traffic violations? Remember you must include: Misdemeanors and Felonies. Regardless of length of time which has passed since the conviction [*sic*]." (Original emphasis.) Respondent answered "No." By signing her application, respondent certified under penalty of perjury that the

information she provided was true and correct. Respondent's answer was false in that she failed to disclose the conviction set forth in Finding 3, below.

3. On August 27, 1998, in Santa Clara County Municipal Court Case No. C9883437, respondent was convicted on her plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a vocational nurse. Imposition of sentence was suspended and respondent was placed on court probation for three years on the conditions (among others) that she perform 15 days of weekend work, pay fines and fees of approximately \$650, and complete a first offender alcohol program. Respondent satisfied all of the terms and conditions of her probation.

4. The facts and circumstances leading to this conviction are that, on March 22, 1998, respondent drove a vehicle while under the influence of alcohol. When she was pulled over, respondent refused to take a breathalyzer test. She was, in her own words, a "young smart mouth." Respondent was 23 years old at the time she committed this offense.

5. On June 30, 2008, in Alameda County Superior Court Case No. 229320, respondent was convicted on her plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), a misdemeanor and a crime substantially related to the qualifications, functions or duties of a vocational nurse. Imposition of sentence was suspended and respondent was placed on probation for three years on the conditions (among others) that she perform two days of weekend work (with credit for one day), pay fines and fees in the approximate amount of \$1,700, and attend a nine-month drinking driver program. Respondent is making monthly payments toward her fines and fees and she is current in her payments. She completed the drinking driver program in April 2009. As part of that program, respondent was required to attend six substance abuse education classes, 20 group counseling sessions, 14 individual meetings with a counselor, and 20 Alcoholics Anonymous-type meetings. Respondent fulfilled all of those requirements.

6. The facts and circumstances leading to this conviction are that, on May 8, 2008, respondent drove a vehicle while under the influence of alcohol. She was pulled over after a police officer observed her traveling at about 95 miles per hour in a 45 miles per hour zone. Respondent's blood alcohol level was 0.17 percent. Respondent testified that, after a particularly bad day, she had gone out drinking with her sister and then returned to her sister's house. She felt that she was sober enough to drive when she left her sister's home.

7. Respondent is 34 years old. She is a single parent who is solely responsible for the support of her 10-year-old son.

8. Respondent graduated from the LVN program at Merritt College in December 2007. (From 2004 to 2006, she attended Laney College to satisfy the prerequisites for the LVN program.) In January 2008, respondent applied for admission to the LVN-RN "bridge" program at Chabot College; as its name implies, this one-year program is for LVN's who

also want to become registered nurses. If her LVN license is granted, respondent hopes to enroll in the bridge program in 2010.

9. Since January 2009, respondent has been employed by Creative Home Care, Inc., a company that provides in-home care to elderly clients. Respondent supervises 10 certified nursing assistants. If she is granted her vocational nurse license, respondent will promote to “medical nurse” and will have more patient interaction. In a letter dated June 2, 2009, Marlene Bremer, the president of Creative Home Care, writes that she has been “very impressed and pleased with [respondent’s] nursing knowledge, bedside manner, professional attitude and appearance.” Bremer goes on to write that respondent’s coworkers were very pleased with her recent promotion to supervisor because they consider respondent to be “knowledgeable, fair and a true leader.”

10. Amanpreet Kaur and Mandeep Dhatt met respondent in the LVN program and they are friends of respondent. In separate letters dated June 1, 2009, they praise respondent for her clinical skills and judgment, her compassion for patients, her work ethic, and her honesty. They believe she will be an excellent nurse.

11. With respect to her DUI’s, respondent testified that she made “dumb mistakes” for which she has no excuses to offer. She understands that, by drinking alcohol and driving, she placed her own life and the lives of others at risk. Respondent is confident that she will not make the same mistake again. Having her vocational nurse license denied was a “big eye-opener” that has greatly affected her life. She has worked hard to become a good nurse – her teachers have told her that she will be a great nurse – and she is mad at herself for placing her career in jeopardy by making bad decisions. Respondent testified that she rarely drinks, and she does not drink as a way to manage stress. If she drinks alcohol in the future, she will not drive, but will call a friend or take a taxi. Respondent feels that her decision-making is better now that she realizes her career is on the line.

12. Respondent testified that, when she was convicted of DUI in 1998, her lawyer told her that the conviction was a serious matter and that it would stay on her record for seven years; during that time, the lawyer informed her, she would need to disclose the conviction on all of her job applications. For seven years, respondent stated, she disclosed the conviction on every job application but, when the seven years was up, she assumed that the conviction was off her record and that she no longer needed to report it.

13. Respondent testified in a manner that was consistent with sincerity.

LEGAL CONCLUSIONS

1. First cause for denial. Business and Professions Code¹ sections 480, subdivision (a)(1), and 2866 together provide that an application may be denied if the applicant has been convicted of a crime that is substantially related to qualifications,

¹ All statutory citations are to the Business and Professions Code.

functions or duties of a vocational nurse. Cause exists to deny respondent's application by reason of the conviction set forth in Finding 3.

2. Second cause for denial. Cause exists under sections 480, subdivision (a)(1), and 2866 to deny respondent's application by reason of the conviction set forth in Finding 5.

3. Third cause for denial. Sections 480, subdivision (a)(3), and 2866 together provide that an application may be denied if the applicant has committed any act that would constitute cause for discipline if committed by a licensed vocational nurse. A licensed vocational nurse may be disciplined for engaging in unprofessional conduct (§ 2878, subd. (a)), which is defined to include the use of alcohol in a manner or to an extent dangerous to herself or others (§ 2878.5, subd. (b)) and being convicted of a crime involving the consumption of alcohol (§ 2878.5, subd. (c)). Cause exists under these provisions to deny respondent's application by reason of the matters set forth in Findings 3 through 6.

4. Fourth cause for denial. Sections 480, subdivision (c), and 2866 together provide that an application may be denied if the applicant knowingly made a false statement of fact required to be revealed in her application. Cause exists to deny respondent's application by reason of the matters set forth in Finding 2 and 3.

5. Respondent has suffered two convictions, ten years apart, for driving under the influence of alcohol. Her last offense occurred just over a year ago and involved conduct that posed a serious risk to the general public. Respondent will remain on probation for that offense until 2011. It appears, however, that respondent's attitude toward drinking and driving has changed. She acknowledges the severity of her misconduct and offers no excuses for it. She has been fully cooperative with her probation program, including completion of the drinking driver course. She takes her offenses seriously and, partly because her career as an LVN is important to her, she is highly motivated to avoid similar misconduct in the future. Since obtaining her LVN certificate, respondent has proven herself to be a valued and responsible employee. Although it has been just a year since respondent's last conviction, meaningful rehabilitation has already begun.

Any failure to disclose a material fact on a license application is a matter of serious concern. Respondent exercised poor judgment when she disregarded the plain language on the application form, which directs the applicant to report all convictions regardless of when they occurred, and chose instead to rely on general advice she had received from her attorney years earlier. It appears, however, that respondent's failure to disclose her 1998 DUI conviction was not due to fundamental dishonesty.

In closing argument, both parties stated that they would not be averse to granting respondent a probationary license with conditions, including conditions that respondent abstain from the use of alcohol and that she participate in rehabilitation and monitoring as directed by the Board. Respondent's rehabilitation has progressed sufficiently so that it would not be contrary to the public interest to issue her a probationary license.

ORDER

The application of respondent Linnea Celeste Ramos for a vocational nurse license is denied; however, the denial is stayed and a probationary license shall be issued to respondent for three (3) years subject to the following conditions:

1. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

Respondent shall comply with the terms of her probation in Alameda County Superior Court Case No. 229320. Any violation of probation in that case shall be deemed a violation of these probation conditions.

2. **SUBMIT WRITTEN REPORTS.** Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied

for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S). Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE. Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall automatically be extended for the same time period she resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

5. MEETINGS WITH BOARD REPRESENTATIVE(S). Respondent shall appear in person at meetings as directed by the Board or its designated representatives.
6. NOTIFICATION TO EMPLOYER(S). When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of respondent's license. This notification to respondent's current health care employer shall occur no later than the effective date of the decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's statement of issues and decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

7. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.**

Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. **SUPERVISION REQUIREMENTS.** Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

9. **COMPLETION OF EDUCATIONAL COURSE(S).** Respondent, at her own expense, shall enroll in and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the

Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

10. MAINTENANCE OF VALID LICENSE. Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. LICENSE SURRENDER. During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

12. REHABILITATION PROGRAM. Within thirty (30) days of the effective date of the decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended

by the program and approved by the Board. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within thirty (30) days of completion.

Components of the treatment contract shall be relevant to the violation and to respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by respondent.

13. **CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS.** Within five (5) days of the effective date of the decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by respondent with each written report required by the Board. Respondent shall continue attendance in such a group for the duration of probation.
14. **ABSTAIN FROM CONTROLLED SUBSTANCES.** Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.
15. **ABSTAIN FROM USE OF ALCOHOL.** Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.
16. **SUBMIT BIOLOGICAL FLUID SAMPLES.** Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and respondent's current employer.
17. **COMPLIANCE WITH PROBATION PROGRAM.** Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of probation, respondent's license will be fully restored.

18. VIOLATION OF PROBATION. If respondent violates the conditions of her probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the denial of respondent's license application that was stayed. If during probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

DATED: June 26, 2009

A handwritten signature in black ink, appearing to read "David L. Benjamin", written over a horizontal line.

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. VN-2007-1795

13 LINNEA CELESTE RAMOS

2347 Royal Ann Drive

14 Union City, California 94587

STATEMENT OF ISSUES

Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
19 Statement of Issues solely in her official capacity as the Executive Officer of the Board of
20 Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

21 2. On or about December 24, 2007, the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs received an application for a
23 Vocational Nurse License from LINNEA CELESTE RAMOS (Respondent). On or about
24 November 26, 2007, LINNEA CELESTE RAMOS certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on December 16, 2008.

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1 such license."

2 8. Section 2878 of the Code states, in pertinent part:

3 "The Board may suspend or revoke a license issued under this chapter [the
4 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

5 "(a) Unprofessional conduct, . . .

6 ". . . .

7 9. Section 2878.5 of the Code states, in pertinent part:

8 "In addition to other acts constituting unprofessional conduct within the meaning
9 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
10 licensed under this chapter to do any of the following:

11 ". . .

12 "(b) Use any controlled substance as defined in Division 10 of the Health and
13 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of
14 Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner
15 dangerous or injurious to himself or herself, any other person, or the public, or to the extent that
16 such use impairs his or her ability to conduct with safety to the public the practice authorized by
17 his or her license.

18 "(c) Be convicted of a criminal offense involving possession of any narcotic or
19 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
20 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
21 conclusive evidence thereof."

22 10. Section 490 of the Code states:

23 "A board may suspend or revoke a license on the ground that the licensee has been
24 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
25 of the business or profession for which the license was issued. A conviction within the meaning
26 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
27 contendere. Any action which a board is permitted to take following the establishment of a
28 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

1 been affirmed on appeal, or when an order granting probation is made suspending the imposition
2 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
3 Penal Code."

4 FIRST CAUSE FOR DENIAL OF APPLICATION

5 (Substantially Related Criminal Conviction)

6 11. Respondent's application is subject to denial under Sections 480(a)(1) and
7 2866 (committing crime constituting grounds for denial of licensure under section 480) of the
8 Code in that she was convicted of a crime substantially related to the qualifications, functions or
9 duties of a vocational nurse, in that on or about June 30, 2008, in the Superior Court of
10 California, County of Alameda, Fremont Hall of Justice, Case No. 229320, entitled *The People*
11 *of the State of California vs. Linnea Celeste Ramos*, Respondent was convicted by her plea of no
12 contest of violating Section 23152(b) of the Vehicle Code (driving with a blood alcohol content
13 of .08% and more), a misdemeanor, and admitted that during the commission of said offense, she
14 had a concentration of alcohol in her blood of .15 percent or more. Pursuant to said conviction,
15 the imposition of sentence was suspended and Respondent was placed on probation for three
16 years on terms and conditions, which included, but were not limited to, paying a fine in the
17 amount of \$1,768.00, and attending and completing a Drinking Driver Program. The factual
18 circumstances of said conviction are as follows:

19 a. On or about May 8, 2008, in Newark, California, Respondent was pulled
20 over by Newark Police Department Officer Hoppe after he observed her driving her vehicle, a
21 1994 Chevy Camaro, at a high rate of speed, 95 mph, in a 45 mph zone. Once pulled over,
22 Respondent admitted to drinking alcohol and explained that she was upset because she had struck
23 a dog with her vehicle after leaving Chabot College earlier that day. After being arrested for
24 driving under the influence of alcohol, Respondent took two breath tests, which both showed that
25 her blood alcohol content was .17 percent.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

5 1. Denying the application of Linnea Celeste Ramos (Respondent) for a
6 Vocational Nurse License; and

7 2. Taking such other and further action as deemed necessary and proper.
8

9 DATED: April 14, 2009
10

11 

12 TERESA BELLO-JONES, J.D., M.S.N., R.N.
13 Executive Officer
14 Board of Vocational Nursing and Psychiatric Technicians
15 Department of Consumer Affairs
16 State of California
17 Complainant
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19 03595110-SF200903216

20 CSR: 03-19-09
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